

Exhibit 7

Robert Klugman - January 28, 2021

Page 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
CASE NO. 18-MD-2865 (LAK)

IN RE:)

CUSTOMS AND TAX ADMINISTRATION OF)
THE KINGDOM OF DENMARK)
(SKATTEFORVALTNINGEN) TAX REFUND)
SCHEME LITIGATION)

This document relates to case nos.)
19-cv-01783; 19-cv-01788; 19-cv-01794;)
19-cv-01798; 19-cv-01918)

REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL
EXAMINATION OF
ROBERT KLUGMAN

DATE: January 28, 2021

REPORTED BY: MICHAEL FRIEDMAN, CCR

Robert Klugman - January 28, 2021

7 (Pages 22 to 25)

Page 22	Page 24
<p>1 Q Okay. Did you have your own 401(k)</p> <p>2 prior to setting up these plans?</p> <p>3 A What do you mean by my own 401(k)?</p> <p>4 Q From your career at Credit Suisse</p> <p>5 and UBS in banking, did you have your own</p> <p>6 retirement account?</p> <p>7 A Yes, I did.</p> <p>8 Q Was that a 401(k)?</p> <p>9 A I had a couple of different ones,</p> <p>10 but yes, I had a -- I wasn't employed at</p> <p>11 Credit Suisse anymore, but I was allowed, as</p> <p>12 a former employee, to maintain a 401(k).</p> <p>13 Q Why did you not use any of those</p> <p>14 plans for any of the Danish trading?</p> <p>15 A Well, it was only one plan. And in</p> <p>16 order to -- when you have a plan with a</p> <p>17 former employer, the choices of investments</p> <p>18 are limited.</p> <p>19 And they were -- in this case, it</p> <p>20 was a Fidelity plan that was limited to maybe</p> <p>21 five Fidelity funds, so I wasn't able to use</p> <p>22 that plan for this.</p> <p>23 Q So in order to do the Danish</p> <p>24 trading, you needed to set up a new plan?</p> <p>25 A Or, I would guess, I could</p>	<p>1 Q And when he explained size limits,</p> <p>2 what kind of -- what was he -- what was</p> <p>3 limited by size?</p> <p>4 A The number of shares that could be</p> <p>5 purchased.</p> <p>6 Q What was the limit on the number of</p> <p>7 shares?</p> <p>8 A I don't remember what the limit</p> <p>9 was.</p> <p>10 Q Did he give a number?</p> <p>11 A No.</p> <p>12 Q Did he explain what the expected</p> <p>13 profits would be per plan, per allocation?</p> <p>14 A Sorry? You said the expected</p> <p>15 profit?</p> <p>16 Q Yes. So if you set up a plan, and</p> <p>17 you got an allocation, what the expected</p> <p>18 profit would be on that?</p> <p>19 A Yes, he gave an estimate.</p> <p>20 Q And what was that?</p> <p>21 A I think he gave an estimate of</p> <p>22 around, if all the trading worked, around a</p> <p>23 million dollars per plan.</p> <p>24 I don't remember exactly.</p> <p>25 Q And did he explain over what period</p>
Page 23	Page 25
<p>1 theoretically have gotten approval from</p> <p>2 Fidelity to use this, but that would have</p> <p>3 been very impractical.</p> <p>4 Q Okay. Why did you set up six</p> <p>5 plans? Why not just one?</p> <p>6 A Well, it was -- I was told in order</p> <p>7 to get an allocation, it needed to be done</p> <p>8 through multiple plans to get that. There</p> <p>9 was an allocation per plan, and if I wanted</p> <p>10 to get a certain allocation, it would have to</p> <p>11 be in multiple plans.</p> <p>12 Q And who told you that?</p> <p>13 A Sanjay Shah.</p> <p>14 Q And when did he tell you that?</p> <p>15 A Sometime in the spring of 2014.</p> <p>16 Q And did he explain why there was a</p> <p>17 limited allocation per plan?</p> <p>18 A My recollection is a little fuzzy</p> <p>19 on this. But, I mean, I think it had to do</p> <p>20 with size limits per plan based on local law,</p> <p>21 "local" being non-U.S.</p> <p>22 Q And did he explain where this local</p> <p>23 law was, where outside the U.S. it was?</p> <p>24 A Well, he talked about doing</p> <p>25 transaction in Belgium and Denmark.</p>	<p>1 of time that million dollars per plan would</p> <p>2 be realized?</p> <p>3 A He did, but I'm -- I'm having</p> <p>4 trouble remembering because he did give an</p> <p>5 estimate of which stocks would be traded, and</p> <p>6 I'm not sure whether that was for all of 2014</p> <p>7 and '15 or just the next 12 months.</p> <p>8 Q And was there any limit on the</p> <p>9 number of plans that could participate?</p> <p>10 A He gave an allocation for a certain</p> <p>11 number of plans, and that was -- that was it.</p> <p>12 We didn't talk about that.</p> <p>13 Q When you say "a certain number of</p> <p>14 plans," did he tell you there was a</p> <p>15 particular number of plans that he had in</p> <p>16 mind, or was he just saying that there was</p> <p>17 some limit?</p> <p>18 A He told me for -- for my</p> <p>19 allocation, I could invest through six plans.</p> <p>20 Q And did he give you any</p> <p>21 understanding as to where that six -- number</p> <p>22 six came from?</p> <p>23 A I don't remember if he did or</p> <p>24 didn't.</p> <p>25 Q Did you have any discussions as to</p>

Robert Klugman - January 28, 2021

58 (Pages 226 to 229)

Page 226

1 reclaim applications that the plans submitted
2 to SKAT?

3 A I don't recall whether it was
4 before -- you know, while the transactions
5 were going on or after, in reviewing the
6 documents. But I have seen them.

7 Q And what about the dividend credit
8 advices? Did you see those at the time that
9 the transactions were going on or at the time
10 that the applications were being submitted to
11 SKAT?

12 A I know -- I'm sorry. Too much
13 coffee.

14 Yes, I -- well, same answer is that
15 I believe I saw them while it was going on,
16 you know. But I know that I've seen them
17 since and reviewed them, so it's hard to know
18 when I reviewed them.

19 Q Okay. If you could go back to the
20 first binder and take a look at Exhibit 1801?

21 MR. MAGUIRE: Mark this as 1801.

22 (Whereupon the above mentioned was
23 marked for identification.)

24 A Back to the first one?

25 Okay. I'm here.

Page 228

1 A Yes.

2 Q And the dividend was actually paid
3 on August 13.

4 Right?

5 A I believe TDC paid a dividend on
6 August 8th. That was their -- sorry, on
7 August 13th.

8 That's their payment date, yes.

9 Q And so the plan purchased all of
10 the shares on August 7.

11 Do you remember that?

12 A Yes. That was the purchase that
13 was made.

14 Q Right. And then, just below the
15 dividend are the payments details, and it has
16 the dividend per share.

17 Do you see that's 1 kroner, 50?

18 A Yes.

19 Q And it does the math for us, for
20 the 3,533,850 shares, and it gives us the
21 gross amount of the dividend, the tax, and
22 the net amount of the dividend.

23 Right?

24 A Yes.

25 Q And I haven't done the calculation,

Page 227

1 Q Okay. If you take a look at that,
2 I think you'll see that's the reclaim by the
3 Aerovane plan for that early August 2014
4 trade in TDC.

5 A Yes.

6 Q Then, if you turn to the third
7 page, you'll see the income advice from
8 Old Park Lane?

9 A Yes.

10 Q It's signed by Michael Partus.

11 Did you ever have any dealings with
12 Michael Partus?

13 A Not that I recall, no.

14 Q So the income advice describes the
15 ticker in the box at the center of the page.

16 Do you see that?

17 A Yes.

18 Q And it describes the ex-dividend
19 date, which was August 8, the record date,
20 which was August 12, and the payment date of
21 August 13.

22 You understand those are all with
23 respect to the dividend, right? The shares
24 of TDC became ex-dividend on August 8.

25 Right?

Page 229

1 but I think we all understand that the tax is
2 27 percent of the gross?

3 A That seems right.

4 Q And then, the remaining 73 percent
5 is the net amount of the dividend.

6 Right?

7 A Yes.

8 Q And then, this reclaim is for the
9 tax portion of the dividend?

10 A Yes.

11 Q So, under this application, it's
12 telling SKAT that that 27 percent of the
13 dividend was withheld in tax and should be
14 repaid.

15 Right?

16 A It is telling us that for the
17 purpose of the reclaim, we are entitled to
18 reclaim that tax amount.

19 Q Right. And that's because, on the
20 appropriate date, the -- Aerovane was the
21 owner of the shares and was entitled to
22 receive and did receive the dividend less the
23 tax that was withheld?

24 A I'm not sure I would put it that
25 way.

Robert Klugman - January 28, 2021

59 (Pages 230 to 233)

Page 230	Page 232
<p>1 Q How would you put it?</p> <p>2 A I would say based on the trading</p> <p>3 that was done and the tax advice given, that</p> <p>4 we are, as a matter of fact, entitled -- when</p> <p>5 I say "we," I'm using the plan</p> <p>6 again -- entitled to reclaim that</p> <p>7 1.4 million, et cetera kroner amount.</p> <p>8 Q Okay. So did Aerovane, the plan,</p> <p>9 ever receive the dividend from TDC that was</p> <p>10 paid out by the company on the 13th of</p> <p>11 August?</p> <p>12 A So did TDC send that \$5.3 million</p> <p>13 to the plan? So did -- did it get the money</p> <p>14 from TDC?</p> <p>15 Q Did the company make that payment,</p> <p>16 and did the plan receive its share of that</p> <p>17 payment?</p> <p>18 A I don't know.</p> <p>19 Q Well, if the plan received the</p> <p>20 dividend, you would expect that to show up in</p> <p>21 the plan records.</p> <p>22 Right?</p> <p>23 A If the plan -- if the plan received</p> <p>24 a dividend payment, it could -- yes, it could</p> <p>25 show up in the records of the plan.</p>	<p>1 dividend to be zeroed out?</p> <p>2 A I don't know. It could be a</p> <p>3 mark-to-market payment. I don't know.</p> <p>4 I don't know the answer.</p> <p>5 Q It could be a mark-to-market</p> <p>6 payment?</p> <p>7 A Yeah.</p> <p>8 Q A mark-to-market payment is an</p> <p>9 adjustment in value based on a fluctuation in</p> <p>10 market price.</p> <p>11 Right?</p> <p>12 A That's right.</p> <p>13 Q So it would be an extraordinary</p> <p>14 coincidence if that adjustment of market</p> <p>15 price happened to equal and exactly offset</p> <p>16 3,869,527 kroner and 42 cents?</p> <p>17 A Not necessarily.</p> <p>18 THE VIDEOGRAPHER: The time is</p> <p>19 4:57 p.m. and we're going off the</p> <p>20 record.</p> <p>21 (Whereupon a discussion was held</p> <p>22 off the record.)</p> <p>23 THE VIDEOGRAPHER: Stand by. The</p> <p>24 time is 4:59 p.m. and we're back on</p> <p>25 record.</p>
Page 231	Page 233
<p>1 Q It could or it would?</p> <p>2 A Well, it depends on how the records</p> <p>3 are prepared. I don't know what -- you know.</p> <p>4 Q Well, any records that show cash</p> <p>5 payments received, then the dividend should</p> <p>6 show up.</p> <p>7 Right?</p> <p>8 A It should show up, yes, unless</p> <p>9 there's a netting arrangement where they</p> <p>10 don't actually receive the cash.</p> <p>11 Q And what kind of netting</p> <p>12 arrangement would that be?</p> <p>13 A Any netting arrangement. If one</p> <p>14 party owes the other money, and the other</p> <p>15 party owes money back, you can just say,</p> <p>16 "okay, no flows." I'm using a simplified</p> <p>17 example.</p> <p>18 But yeah, it doesn't necessarily</p> <p>19 have to have cash flow to be entitled to a</p> <p>20 cash payment. There's netting in financial</p> <p>21 markets.</p> <p>22 Q Right. But we're talking about</p> <p>23 plans now.</p> <p>24 What offsetting payment was due</p> <p>25 from any plan that would cause the net</p>	<p>1 Q So, sir, we were just discussing</p> <p>2 what circumstances would cause the net amount</p> <p>3 of the dividend to be zeroed out on the</p> <p>4 plan's records so that the entire and exact</p> <p>5 amount of the dividend would not show up.</p> <p>6 And I think you had mentioned --</p> <p>7 was it mark-to-market?</p> <p>8 A Yeah. Well, basically, you have a</p> <p>9 transaction that's perfectly hedged.</p> <p>10 So, in a perfectly hedged</p> <p>11 transaction, you shouldn't be receiving free</p> <p>12 cash flow of a dividend. It has to go</p> <p>13 somewhere else.</p> <p>14 If not, then you're just -- the</p> <p>15 arbitrage is even bigger. You can't just --</p> <p>16 you know, there has to be an offset in value</p> <p>17 to the dividend.</p> <p>18 Q So can you explain where is that</p> <p>19 "somewhere else?" What is that offset?</p> <p>20 A Well, I'm -- I'm having trouble,</p> <p>21 but if you look at the three legs of the</p> <p>22 transaction, you have a stock purchase, a</p> <p>23 forward, and a forward sale. And the forward</p> <p>24 sale price, ignoring -- this is just, in</p> <p>25 general, how forwards are priced when you</p>

Robert Klugman - January 28, 2021

76 (Pages 298 to 301)

Page 298	Page 300
<p>1 retirement plans and it can be somewhat of a 2 legal minefield. 3 There's people who are specialists 4 in that area. I'm certainly far from one of 5 them. 6 And this was -- this memo was 7 making sure that -- that well, in this case, 8 the people who it was addressed to didn't run 9 afoul of those regulations. 10 Q Let's look at just the first 11 paragraph of the section. It says, "A 12 transaction between a retirement plan subject 13 to 4957 of the code and a disqualified person 14 described in Appendix A that is prohibited 15 under Section 4975 of the code described in 16 Appendix A will be subject to the tax under 17 Section 4975 of the code described below 18 unless it meets the requirements of a 19 prohibited transaction exception under 20 Section 4975." 21 A Yes. 22 Q And finally, I would like you to go 23 down to page 14? 24 A Page 14? Yes. 25 Q And the final sentence of this</p>	<p>1 me at this point, but I didn't catch the last 2 part of your answer there. 3 A Well, yes, that looks like that's 4 what it's related to. It's -- I will be 5 honest, some of the language is beyond me, 6 particularly that sentence you read. 7 But it does look like it's related 8 to everything in that Roman Numeral 2. 9 Q Okay. Turning away from the memo, 10 Kaye Scholer did not receive any proceeds 11 from the transactions. 12 Is that right? 13 A Other than -- other than legal 14 fees? No. 15 Q Other than legal fees -- 16 A I should add, not that I know of 17 from me, other than legal fees. 18 Q Okay. And by "legal fees," you 19 mean the hourly billing of lawyers' time and 20 support staff time, those sorts of legal 21 fees? 22 A Yes. 23 Q And you didn't understand 24 Kaye Scholer to be providing legal advice 25 with respect to Danish law, did you?</p>
Page 299	Page 301
<p>1 memorandum reads, "This memorandum does not 2 address other issues other than those 3 specifically addressed herein." 4 A Yes. 5 Q So do you have any reason to think 6 that this memorandum addressed any legal 7 issues other than those related to 8 transactions with disqualified persons under 9 the Internal Revenue Code? 10 A Let me -- may I just read the 11 memorandum? 12 Q You may, yes. 13 A (Witness reviewing.) 14 And my computer's a little slow, so 15 this might take a tiny bit. Hold on. 16 (Witness reviewing.) 17 Yeah, it looks like a very thorough 18 discussion of what was headlined in 19 Roman Numeral 2. 20 Q Okay. And that would be the issue 21 of transactions with disqualified persons 22 under the U.S. Internal Revenue Code? 23 A Yes, that's what it looks like 24 everything under that is related to. 25 Q I'm sorry. And it could have been</p>	<p>1 A With respect to Danish law? No. 2 Q Okay. 3 MR. MULLEN: I have no other 4 questions. 5 MR. ALLISON: Bill, do you mind? 6 Give me two minutes to get my notes? 7 MR. MAGUIRE: Of course. 8 THE VIDEOGRAPHER: The time is 9 6:52 p.m. and we're going off the 10 record. 11 (Brief recess taken.) 12 THE VIDEOGRAPHER: Stand by. The 13 time is 6:58 p.m. and we're back on 14 record. 15 MR. ALLISON: Thank you. We have 16 no questions for Mr. Klugman. 17 MR. MAGUIRE: I have one or two 18 last questions. 19 20 CONTINUED EXAMINATION BY MR. MAGUIRE: 21 Q You were asked some questions about 22 Kaye Scholer and its role. 23 How would you describe 24 Kaye Scholer's role with respect to the time 25 when you were involved in the Danish trading</p>

Robert Klugman - January 28, 2021

77 (Pages 302 to 305)

Page 302

1 scheme?

2 A I'm not sure how I would describe
3 it, but it wasn't -- it was in line with the
4 role of lawyers that I've worked with, you
5 know, throughout my entire career from big
6 law firms.

7 It was just, generally speaking,
8 making sure everything was done correctly.

9 Q And how did Kaye Scholer know how
10 you were doing in the Danish trades?

11 A Well, they were -- again, in
12 general, involved in every aspect. And this
13 is before I got there, so I assume there was,
14 you know, two-plus years of learning because
15 I was -- I was definitely behind the curve.

16 But from what I saw, it was -- you
17 know, kind of from -- to use an overused
18 expression, "from womb to tomb," they helped
19 us in setting up the entities, they helped in
20 getting us to be approved clients of the
21 entities. They knew what trades were going
22 on.

23 They helped us with tax issues,
24 securities law issues, reporting issues,
25 yeah, just in line with how I've worked with

Page 304

1 everything that be we were doing.

2 Q And were you open in disclosing
3 what you were doing to Kaye Scholer?

4 A Absolutely.

5 Q Did you withhold any information
6 from Kaye Scholer?

7 A No.

8 MR. MAGUIRE: That's all. Thank
9 you, sir.

10 THE WITNESS: Thank you.

11 MR. MULLEN: I do have a few
12 follow-up questions.
13

CONTINUED EXAMINATION BY MR. MULLEN:

14
15 Q I apologize, Mr. Klugman. I bet
16 you thought you were getting out of here.

17 A No, don't apologize. I understand.
18 Are you Canadian?

19 Q I'm not Canadian, no.

20 A Okay. I apologize for asking. Go
21 ahead. I like to know.

22 Q Fine. Just a few follow-up
23 questions.

24 First, is it correct you don't know
25 whether or not Kaye Scholer saw the trade

Page 303

1 other law firms my whole career.

2 Q And how did Kaye Scholer know how
3 you were doing the Danish trades?

4 A Well, I mean, they knew all the
5 agreements we were entering into. They
6 obviously knew how the trade worked. They
7 wrote it in their memorandum.

8 The trade wasn't that much
9 different, as we went through, i.e. -- I
10 mean, I -- they must have seen the confirms.
11 I don't know if they did or didn't, but they
12 knew the agreements under which the confirms
13 were being entered -- were -- you know, were
14 for, for the stock loan purchase and forward
15 contracts, you know.

16 And there was a lot of back and
17 forth on -- as I saw in this memo, about
18 securities limitations under securities law
19 in Denmark, which they helped us work
20 through. I know there were a lot of issues
21 back and forth with Treasury on how to report
22 this. There were obviously tax issues as we
23 saw from the memorandum.

24 So they couldn't have possibly
25 answered those questions without knowing

Page 305

1 confirms? Is that right?

2 A I don't know for sure that
3 they -- they saw the trade confirms.

4 Q Okay. And yet you referenced
5 advice regarding securities limitations on
6 what -- let me make sure I get the exact
7 phrasing right, hold on just a
8 moment -- yeah, you said they discussed in
9 the memo "securities limitations under
10 securities law in Denmark."

11 What were you referring to when you
12 said that?

13 A Well, that was -- what was in that
14 e-mail that we talked about earlier, before
15 one of the breaks, there was a long e-mail
16 discussing Danish securities law and getting
17 an opinion. And I think there was a -- there
18 was a contact from the London office of
19 Kaye Scholer with a securities lawyer. I
20 don't remember exactly.

21 But if we went back to the
22 document, which I don't think I remember the
23 number, either --

24 Q It was Exhibit 1852, and I think we
25 should go back to that document.